

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION

UNITED STATES OF AMERICA	)	DOCKET NO. 1:19CR63
	)	
v.	)	GOVERNMENT’S RESPONSE
	)	TO DEFENDANT’S SECOND
JOSEPH CECIL VANDEVERE	)	MOTION TO DELAY REPORTING
_____	)	TO THE BUREAU OF PRISONS

NOW COMES the United States of America, by and through R. Andrew Murray, United States Attorney for the Western District of North Carolina in opposition to Defendant’s request to delay reporting to the Bureau of Prisons.

**I. Procedural History**

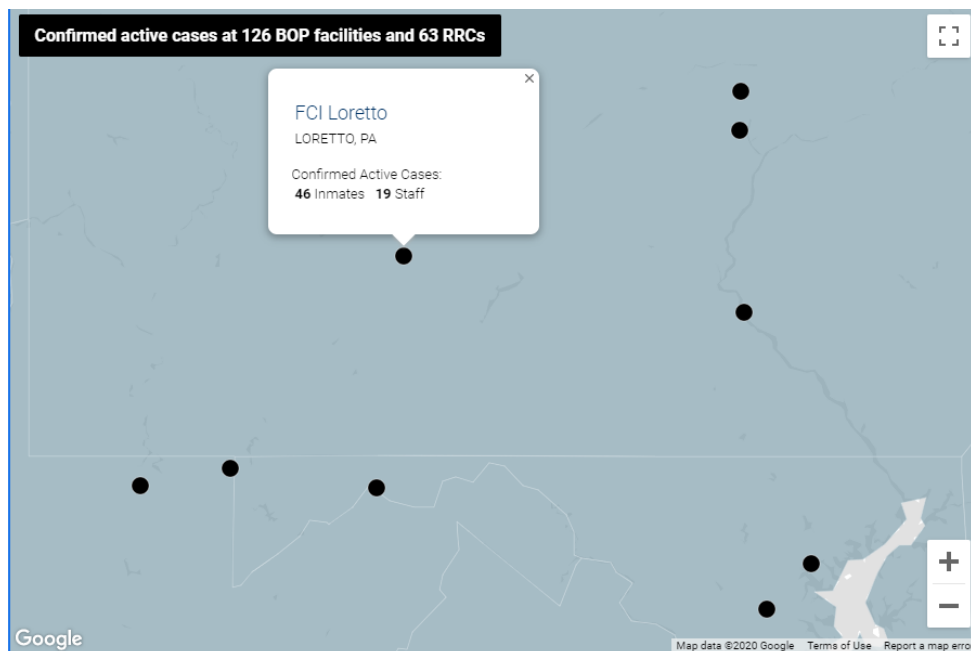
On December 6, 2019, Defendant was convicted following a jury trial on one count of communicating an interstate threat. On June 2, 2020, Defendant was sentenced to a term of ten months imprisonment. *See Judgment*, Document 59. Defendant filed notice of appeal of his conviction and opening briefs have not yet been filed in the Fourth Circuit Court of Appeals. Defendant sought permission for bail or release from the Fourth Circuit during the pendency of his appeal. On August 18, 2020, the Fourth Circuit denied this request. Thereafter, Defendant sought permission from the District Court to delay his reporting to prison. *See* Document 66. The Government opposed this request. *See* Document 71. On September 4, 2020, the Court granted Defendant’s request for a 90 day extension.

The Defendant's appeal is still pending before the Fourth Circuit and Defendant has now renewed his request to delay reporting. *See* Document 73.

## **II. Argument**

Defendant's Second Motion to Delay reporting again argues that he suffers from health conditions that put him at increased risk for serious illness should he contract the COVID-19 virus. Defendant cites that he suffers from Chronic Obstructive Pulmonary Disease (COPD). Concerning COPD, Defendant's Presentence Investigation Report (PSR) cites that "in July 2018, he reported being treated for chest pain and Chronic Obstructive Pulmonary Disease (COPD). Mr. Vandevere advised he refuses prescription medicines, but his treatment is ongoing, and he is under the care of Dr. Tuttle." PSR at ¶ 74. Defendant cites in his motion that his attachments to his Sentencing Memorandum contain further documentation of his medical conditions. The undersigned reviewed those documents and notes that they primarily contain documentation concerning various knee and orthopedic health conditions, but did not locate any specific diagnosis concerning Defendant's COPD condition. The documentation notes "no pulmonary emboli are seen" and "progressive emphysematous changes with chronic interstitial changes as described above." A reference exists to a study due to "L chest pain / shortness of breath." *See* Exhibit 2, page 5 to Document 55.

Defendant cites that as of the date of his motion (filed November 20, 2020), Pennsylvania has experienced worsening or continuation of the COVID-19 pandemic. The undersigned does note that as of December 3, 2020, the BOP website indicates a greater number of cases of COVID-19 at FCI Loretto than upon Defendant's initial request. The BOP cites 46 active cases amongst inmates and 19 amongst staff.



*Screenshot of report of COVID-19 cases from <https://www.bop.gov/coronavirus/index.jsp>.*

Nonetheless, Defendant's documentation concerning COPD is limited and he has not shown that his incarceration at FCI Loretto definitively poses a significant health risk to him. As the Court is well aware, the Bureau of Prisons has taken extraordinary measures to control the spread of COVID-19 within their facilities and to provide medical care for its inmates. There is no evidence that

Defendant's risk of contracting COVID-19 is actually greater in the tightly controlled BOP environment than it is if he remains free in the community. While the Government acknowledges that COPD is one of the risk factors for COVID-19 cited by the Centers for Disease Control, the Court is within its discretion to deny Defendant's request.

**RESPECTFULLY SUBMITTED**, this the 3rd day of December, 2020.

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